



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN 11, TEXAS

**WILL WILSON
ATTORNEY GENERAL**

February 17, 1960

Hon. Zollie Steakley
Secretary of State
Hon. Robert S. Calvert
Comptroller of Public Accounts
Capitol Station
Austin, Texas

OPINION NO. WW-806

Re: Authority of the Secretary of State and the Comptroller of Public Accounts concerning the administrative procedure for the forfeiture of the right to do business of a corporation which is delinquent in the filing of its franchise tax report and in the payment of franchise taxes.

Dear Mr. Steakley and Mr. Calvert:

You have inquired of us whether or not authority is vested in the Secretary of State or the Comptroller of Public Accounts concerning the responsibility for the administrative procedure for the forfeiture of a corporation's right to do business when the corporation is delinquent in the filing of its franchise tax report and in the payment of franchise taxes.

Prior to the Third Called Session of the Fifty-sixth Legislature, Article 7091, V.C.S., as amended by Acts 1955, Fifty-fourth Legislature provided as follows:

"Any corporation, either domestic or foreign which shall fail to pay any franchise tax provided for in this Chapter when the same shall become due and payable under the provisions of this Chapter, shall thereupon become liable to a penalty of ten per cent (10%) of the amount of such franchise tax due by such corporation. If the reports required by Article 7087 or Article 7089 be not filed in accordance with the provisions

of this Chapter, or if the amount of such tax and penalties be not paid in full on or before the thirtieth day after notice of delinquency is mailed to such corporation as provided in Article 7092, such corporation shall for such default forfeit its right to do business in this State; which forfeiture shall be consummated without judicial ascertainment by the Secretary of State entering upon the margin of the record kept in his office relating to such corporation the words, 'right to do business forfeited' and the date of such forfeiture." (Underscoring added.)

At the time of the above Act all of the duties with regard to the administration and collection of franchise taxes were the responsibility of the office of the Secretary of State. The Third Called Session of the Fifty-sixth Legislature passed House Bill No. 11 which Bill is titled in the Statutes 122A-Taxation-General. In Chapter 24, Section 8 thereof, it is provided that this Act shall be effective September 1, 1959. This Act provides under Article 1.04, Paragraph 3 as follows:

"For the purpose of carrying out the terms of this Article the Comptroller or any authorized agent shall have the authority to examine at the principal or any other office in the United States of any person, firm, agent or corporation permitted to do business in this State, all books, records and papers and also any officers or employees thereof, under oath; and failure or refusal of any person, firm, agent or corporation to permit such examination shall, upon certification of such refusal by the Comptroller to the Secretary of State, immediately forfeit the charter or permit to do business in this State until such examination as is required to be made is completed..." (Underscoring added.)

Article 12.14 of this same Act places the responsibility upon the Secretary of State of forfeiting the "right to do business of a corporation" in the following language:

"Any corporation, either domestic or foreign which shall fail to pay any

franchise tax provided for in this Chapter when the same shall become due and payable under the provisions of this Chapter, shall thereupon become liable to a penalty of ten per cent (10%) of the amount of such franchise tax due by such corporation. If the reports required by Articles 12.08 and 12.09 be not filed in accordance with the provisions of this Chapter, or if the amount of such tax and penalties be not paid in full on or before the thirtieth (30th) day after notice of delinquency is mailed to such corporation, such corporation shall for such default forfeit its right to do business in this State; which forfeiture shall be consummated without judicial ascertainment by the Secretary of State entering upon the margin of the record kept in his office relating to such corporation the words, 'right to do business forfeited' and the date of such forfeiture..." (Under-scoring added.)

Likewise, Article 12.17 of the same Act places the responsibility for the administrative forfeiture of a corporate charter upon the Secretary of State in the following language:

"...Upon determination by the Secretary of State that any domestic corporation whose right to do business has been previously forfeited by that officer, and which corporation has failed and refused to have its right to do business revived pursuant to the provisions of this Chapter, and which corporation fails to revive its right to do business prior to the first day of January next succeeding the date of forfeiture of its right to do business, and which corporation has no assets from which a judgment for the franchise tax, penalties, and court costs may be satisfied, and approval of such determination by the Attorney General, the charter of any such corporation may be forfeited, which forfeiture shall be consummated without judicial ascertainment by the Secretary of State entering upon the charter of such corporations filed in his office the words, 'Charter forfeited,' giving

the date thereof and citing this Act as authority therefor." (Underscoring added.)

Article 12.22, the last paragraph of the Act provides as follows:

"When administration of the franchise tax is transferred from the Secretary of State to the Comptroller of Public Accounts in accordance with Acts of the Fifty-sixth Legislature, Regular Session, 1959, Chapter 325, all administrative powers and duties incident to collection and administration of the franchise tax conferred upon the Secretary of State by this Chapter shall devolve upon and be exercised by the State Comptroller of Public Accounts."

The question at hand calls for an interpretation of the intent of the Legislature in transferring duties from the Secretary of State's Office to the Comptroller's Office with particular regard to the extent to which the "administrative powers and duties" to collect and administer the franchise tax were intended to be transferred to the Comptroller.

It is noted from the above paragraphs that with the exception of Art. 12.22, no provision of this Chapter places any duty on the Comptroller. All duties in Chapter 12 of the new Act are specifically placed on the Secretary of State and the Attorney General with the exception of said Art. 12.22, which provides that "...all administrative powers and duties incident to collection and administration of the franchise tax conferred upon the Secretary of State by this Chapter shall devolve upon and be exercised by the State Comptroller of Public Accounts."

Nothing in the Act takes away the authority and responsibility of the Secretary of State to approve a corporate charter, to certify to same under the great seal of the State and otherwise to literally authorize the creation of a corporation, (see Art. 1313 V.C.S.) as well as the authority to keep the actual charter of a corporation.

The "administrative powers and duties incident to collection and administration of the franchise tax" are only a part of the powers and duties with regard to the

regulation of corporations and corporate taxes.

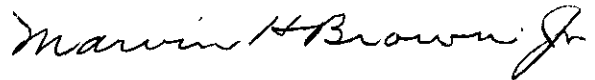
It is the opinion of this office that the powers and duties transferred to the Comptroller by this Act were limited to those incident to the collection of the franchise tax and that it was not the intent of the legislature to take away from the Secretary of State the authority and duty to administratively forfeit a corporation's right to do business. Therefore, the Secretary of State has the authority to administer the procedure for the forfeiture of the right to do business of a corporation which is delinquent in the filing of its franchise tax report and is delinquent in the payment of franchise taxes.

SUMMARY

The Secretary of State has the authority to administer the procedure for the forfeiture of the right to do business of a corporation which is delinquent in the filing of its franchise tax report and is delinquent in the payment of franchise taxes.

Very truly yours,

WILL WILSON
Attorney General of Texas

By 
Marvin H. Brown, Jr.
Assistant

MHB,Jr:sl

APPROVED:

OPINION COMMITTEE
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REVIEWED FOR THE ATTORNEY GENERAL

By: Leonard Passmore